

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2015-004807

08/11/2017

HON. ROSA MROZ

CLERK OF THE COURT
B. Randhawa
Deputy

STEVEN L DAURIO

PHILIP A SEFLOW

v.

AMY JO GARNER, et al.

STEPHEN C RICH

JURY TRIAL VACATED

TELEPHONIC STATUS CONFERENCE SET

East Court Building – Courtroom 414

10:10 a.m. This is the time set for a Pretrial Management Conference. Plaintiff Steven L. Daurio is present and represented by counsel, Philip A. Seplow. Defendants Amy Jo Garner and Shawn Garner are not present but are represented by counsel, Stephen C. Rich.

A record of the proceedings is made digitally in lieu of a court reporter.

Discussion is held regarding Plaintiff's Motion to Continue Trial filed August 3, 2017. The Court is advised that there is related and ongoing litigation in Family Court before the Honorable Judge James Smith, and that there is a custody trial set in that court on August 25, 2017. Plaintiff's counsel advises the Court that the outcome of custody trial may negate the need for trial in this Civil case.

Defendants' counsel advises the Court that Defendants have no objection to Plaintiff's Motion to Continue Trial.

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Based upon the matters presented to the Court,

IT IS ORDERED granting Plaintiff's Motion to Continue Trial filed August 3, 2017 and vacating the four-day Trial to a Jury set to commence on August 21, 2017 in this division.

IT IS FURTHER ORDERED setting a **Telephonic Status Conference on September 29, 2017 at 10:00 a.m. (time allotted: 15 minutes)** to determine whether Honorable Judge Smith has ruled and whether the parties wish to proceed in this case.

HONORABLE JUDGE ROSA MROZ
MARICOPA COUNTY SUPERIOR COURT
EAST COURT BUILDING
101 W. JEFFERSON
4TH FLOOR, COURTROOM 414
PHOENIX, AZ 85003
602-372-0384

Counsel for Plaintiff shall initiate the call by arranging the presence of all parties and contacting this Division's courtroom directly at **(602) 506-5518** at the time indicated above.

PRETRIAL ORDERS

The Court having been assigned to this case, the parties shall make note of the pretrial orders identified below. To the extent that the orders are inconsistent with any order that has been entered in this matter, including any scheduling order, this minute entry controls and the inconsistent language in any such previous order is vacated.

**PRETRIAL STATEMENT &
DUTIES PROR TO FINAL TRIAL MANAGEMENT CONFERENCE**

A Joint Pretrial Statement (JPTS) must be filed no later than **five (5) days prior to the Final Trial Management Conference**. In addition to the materials required by Ariz.R.Civ.P. 16(g), counsel shall meet prior to the Final Trial Management Conference in order to discuss and prepare the following, which shall be filed with or included in the JPTS:

- A. Proposed *voir dire* questions.

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- B. A completed Witness Information Form (attached), setting forth a list of all witnesses each party intends to call at trial in the order in which the party intends to call the witness, together with the estimated time needed for direct, cross, and redirect examinations.
- C. A joint set of agreed-upon jury instructions and verdict forms. Each party shall provide separate sets of any requested instructions that have not been agreed upon. (Please review *Rosen v. Knaub*, 175 Ariz. 329, 857 P.2d 381 (1993) and the RAJI Civil 4th Statement of Purpose and Approach before requesting non-RAJI instructions.) Recommended Arizona Jury Instructions (RAJI (Civil) 4th) need not be retyped, but may be listed by name and number, such as:

RAJI Preliminary 1 - - Duty of Jurors
RAJI Standard 2 - - Burden of Proof
RAJI Negligence 1 - - Violation of Statute

NON-RAJI INSTRUCTIONS shall be typed in Word Format, numbered consecutively, one per page, with legal authority in support of the instruction. A CD of any non-RAJI instructions shall be provided to this Division. (No CD is required for RAJI instructions.)

- D. A brief statement of the claims for inclusion in RAJI Preliminary 14 – Claims Made and Issues To Be Proved.
- E. A stipulated brief summary of the case, to be read by the court during *voir dire*.
- F. A list, by page and line numbers, of all deposition or other transcribed testimony that may be offered at trial, other than for impeachment, including designations of testimony that a party believes ought in fairness to be introduced pursuant to Ariz.R.Civ.P. 32(a) together with any testimony to be offered by an opposing/other party. The court shall also be provided with copies of those parts of any such testimony to which objection is made, indicating the testimony objected to and the reasons for such objection. **Any objection not so included is waived.** Since jurors generally prefer narrative summaries or brief excerpts of questions and answers, the parties should confer and prepare agreed-upon summaries.

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- G. A list of all marked exhibits containing a brief description of each exhibit and any objections to such exhibits. **Any objection not so included is waived.**
- H. Copies of all expert disclosures made pursuant to Ariz.R.Civ.P. 26.1(a)(6).

At the Final Trial Management Conference, counsel who will try the case shall appear and be prepared to discuss and resolve:

- A. Allocation of trial time among the parties and, if appropriate, time limits for *voir dire*, opening statements, witness examinations, and closing arguments;
- B. Stipulations regarding witnesses testimony and the admission of exhibits;
- C. Jury instructions, juror notebooks, and verdict forms;
- D. Deposition summaries and excerpts from depositions including objections thereto;
- E. Scheduling, equipment, or interpreter issues;
- F. Status of settlement negotiations;
- G. Motions *in limine*; and
- H. Other matters addressed in the JPTS.

One day's jury fees will be assessed against the parties (evenly divided) unless the Court is notified of settlement by 2:00 p.m. on the judicial day before trial. Counsel are reminded to promptly notify the Court of any settlement pursuant to Rule 5.3(d)

DUTIES PRIOR TO TRIAL
PLEASE READ CAREFULLY

Counsel shall present **original** depositions for filing at the same time they present exhibits. Original depositions are provided to the clerk for the record and **are not** marked as exhibits.

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IT IS ORDERED that all witness affidavits and expert reports in lieu of testimony must be exchanged and copies filed and lodged with this division no later than two (2) weeks prior to the Final Trial Management Conference. The witness must be available to testify at the time of the hearing. Counsel shall identify the witnesses and a brief description of their testimony. Each side is limited to three (3) witness affidavits, the affidavits are limited to 12 pages each. Uncontroverted witnesses are not required to be present at the time of hearing set herein.

Motions in Limine:

The granting or denial of a motion *in limine* turns on whether the admission of evidence reaches the level of reversible error or a mistrial. Motions *in limine* are not granted “except upon a clear showing of non-admissibility.” The parties shall not file motions denominated as “*in limine*” that are, in substance, late-filed motions for summary judgment.

1. Page Limit and Format: Neither the motion *in limine* nor the response may exceed **three pages**, including the caption. Showing that the motion has merit should not require more than that. Motions *in limine* shall be consecutively numbered in the caption identifying the party filing it and the subject of the motion; e.g. “Defendant’s Motion in *Limine* No. 1 Re: Insurance Agreement,” and shall deal with one discrete subject per motion. Do not respond to more than one motion in *limine* in each response.

Any motion *in limine* or response to such a motion should begin with a simple declarative sentence that identifies the evidence that is the subject of the motion, with the understanding that the broader the scope of the evidence to be excluded, the less likely it is that a motion *in limine* will be granted. The remainder of the motion or response should then explain why a mistrial or reversible error would or would not result if the motion is denied, with citations to authority that have reached the same conclusion in the same or similar circumstances (this also applies to motions *in limine* based on any failure to disclose, keeping in mind that nondisclosure implicates Ariz. R. Civ. P. 37(c)). If the motion is unable to explain why its denial would result in a mistrial or reversible error, the remainder should then demonstrate persuasively what efficiency, economy, or other benefit is to be gained by granting the motion.

2. Rule 7.2: Motions *in limine* shall be filed in accordance with Ariz.R.Civ.P. 7.2. Prior to filing any motion *in limine*, the parties through counsel must meet and confer to attempt to resolve issues to be raised by such motions, and any motions *in limine* must include a certification that counsel have so conferred.

3. Deadlines: The deadline for motions *in limine* is **30 days** before the final pretrial management conference. In both instances, responses must be filed **15 days** after service, and no replies should be filed unless requested.

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4. Under Advisement: Although motions *in limine* will be considered as quickly as the court's schedule permits, they will not be taken under advisement any sooner than 15 days before the start of the trial, regardless of when they are filed. If the parties believe that a ruling on such a motion early in the case will facilitate settlement, they should notify this division (by telephone at **(602) 372-0384** or e-mail to the judicial assistant) and every effort will be made to decide the issue as soon as time allows.

Daubert Motions:

Any motion brought for a *Daubert* hearing or brought under Ariz.R.Evid. 702, shall be filed at least **120 days** before the Final Trial Management Conference). Failure to file such a motion by this date shall constitute a waiver of (1) any objection that the expert is not qualified to render expert testimony, and/or (2) any objection that any opinion of the expert should be excluded under Ariz.R.Evid. 702.

Exhibits:

- Exhibits to be offered at trial shall be delivered to the division clerk no later than **two (2) weeks before trial**. If you have any questions regarding the guidelines set forth below or procedures relating to exhibits, contact this division's clerk, Bal Randhawa, at **(602)506-8806**.
- Exhibits should be submitted to the Clerk separated by a tabbed and numbered divider. Staple or otherwise secure each individual exhibit so that pages do not become separated. If an exhibit is too heavy or large for a hanging file folder, place it in a binder. ***Exhibits not securely bound or bound with binder clips, paper clips, or rubber bands will not be accepted.***
- The list of exhibits should contain the case number and caption, the scheduled trial date, the party submitting the exhibits, the exhibit number, and a simple description of the exhibit. Keep the descriptions of the exhibits *simple*. Do not use a description that cannot be verified by looking at the document or item. *Do not include Bates numbers* in your description of the exhibits.
- Exhibits shall be marked numerically and consecutively beginning with Plaintiff's exhibits and continuing sequentially with Defendant's exhibits (e.g. Plaintiff's exhibits 1, 2, 3, Defendant's exhibits 4, 5, 6). *Do not skip numbers*. Numbers will not be skipped or saved in anticipation of additional exhibits not yet submitted. Any missing or skipped exhibits shall be designated as "*Unused*." Additional exhibits, if necessary, may be marked during the course of trial.

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- Counsel shall eliminate duplication of exhibits; duplicate exhibits *will not* be marked. If duplicate exhibits exist and they are removed by the Clerk and not marked, the Court's numbering will not be consistent with the numbering counsel provided. Counsel shall, therefore, confer regarding exhibits to ensure that there are no duplicates.
- *Do not list depositions* on the exhibit description list because depositions are not marked as exhibits. Original depositions shall be provided to the Clerk at the time of trial for filing directly into the court record. Counsel shall retain a copy of the depositions for their use during the trial. The original depositions remain with the Clerk to be used as reference by the trial judge during testimony.
- Poster boards and large items may only be used for demonstrative purposes. Counsel shall advise opposing/other counsel of any demonstrative poster boards or other items at least three (3) judicial days prior to trial. Counsel may bring poster boards and large items to court to use during trial. However, if counsel intends any poster boards or large items marked as an exhibit, they must provide the clerk with an 8-1/2 x 11 photograph/copy of the item and include the photograph/copy in the submitted list of exhibits. East Court Building - Courtroom 414 is *not* an e-courtroom. No equipment is available in the courtroom except a large screen that may be used at trial for projection of images. Equipment to project images, however, is the sole responsibility of the parties. Court staff is not available or trained to assist any party with any equipment you may bring or use at trial.

Miscellaneous Issues:

All court proceedings are recorded digitally and not by a court reporter. Pursuant to Local Rule 2.22, if a party desires a court reporter for any proceeding in which a court reporter is not mandated by Arizona Supreme Court Rule 30, the party must submit a written request to the assigned judicial officer at least ten (10) judicial days in advance of the hearing, and must pay the authorized fee to the Clerk of the Court at least two (2) judicial days before the proceeding. The fee is \$140 for a half-day and \$280 for a full day.

Requests for interpreters, court reporters or video conference must be made at least two weeks prior to your hearing date.

Trial time will be divided equally between Plaintiff and Defendant. "When you are out of time, you are out of words."

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If you are not familiar with this division's electronic equipment, please make an appointment with this division's bailiff, Timothy O'Pry, via email at opryt@superiorcourt.maricopa.gov, to test the equipment at least one week prior to your hearing.

Preferred communication with this division is via email to the judicial assistant, Sandra Nageotte, at nageottes@superiorcourt.maricopa.gov. We are able to respond much quicker to an email. Please make sure you endorse all parties involved in the case.

Please take the time to review the full protocol for Judge Mroz on the Maricopa County Superior Court website.

10:15 a.m. Matter concludes.